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ILLEGAL ISRAELI ACTIONS IN OCCUPIED EAST JERUSALEM AND THE REST OF THE OCCUPIED PALESTINIAN TERRITORY

SECURITY COUNCIL
Fifty-second year

Report of the Secretary-General submitted in accordance with General Assembly resolution ES-10/3

I. INTRODUCTION

1. The present report is submitted pursuant to resolution ES-10/3 adopted on 15 July 1997 by the General Assembly at its tenth emergency special session. Paragraph 10 of the resolution reads as follows:

> "Recommends that the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War convene a conference on measures to enforce the Convention in the Occupied Palestinian Territory, including Jerusalem, and to ensure its respect, in accordance with common article 1, and requests the Secretary-General to present a report on the matter within three months."

2. In order to fulfil my reporting responsibilities, on 31 July 1997, I addressed a note verbale to the Permanent Observer of Switzerland to the United Nations requesting the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to provide me, in due course, with the necessary information.

II. INFORMATION PROVIDED BY THE GOVERNMENT OF SWITZERLAND

3. On 7 October 1997, the Government of Switzerland conveyed to me the following information:

> "In response to the note of the Secretary-General, the Government of Switzerland sought the views of the 188 States parties to the Fourth Geneva

Convention. The notes addressed to the States parties stated, inter alia, the following:

'It is the responsibility of the States parties to the Fourth Convention, after considering the recommendation addressed to them, to determine how they wish to follow it up. As depositary, the Swiss Government is interested in knowing their views. Therefore, the Embassy has the honour to consult the Ministry and to invite it to submit its comments on possible measures to follow up paragraph 10 of resolution ES-10/3, including comments on the convening of a conference, as recommended, and on the results that might thereby be achieved.'

"To date, 53 States parties to the Convention have sent written replies to the note requesting their views. These views are as follows:

- Twenty-nine States said that they were in favour of the convening of a conference as recommended by resolution ES-10/3.

- One State was against the convening of a conference, saying that 'such a conference would have seriously harmful effects on humanitarian protection and on the peace process'.

- One State said that it had 'voted in favour of General Assembly resolution ES-10/3'.

- One State said that it had 'supported paragraph 10 of General Assembly resolution ES-10/3'.

- One State said that it was 'willing to participate in the conference ... in accordance with paragraph 10 of the resolution'.

- One State said that it had 'noted the recommendation contained in paragraph 10 of the resolution'.

- Two States said that they had 'no objection to the convening of a conference'.

- One State said that it had 'no objection to the proposal to convene a conference of experts from the interested parties, with a view to discussing the existing humanitarian problems in the Palestinian territory'. That State also felt that 'another possible measure ... would be for the interested parties to appeal to the International Fact-Finding Commission (article 90 of Additional Protocol I of 1977). The Commission is competent to facilitate, through its good offices, the restoration of an attitude of respect for the 1949 Conventions'. That State believes, in that regard, 'that the fact that Israel has not acceded to Additional Protocol I of 1977 should not prevent the Commission from resolving the issue on an ad hoc basis'. In the view of this State, 'the implementation of either of these two

measures would be a positive step and would encourage a normalization of the humanitarian situation in the Palestinian territory'.

- One State said that 'a more careful study should be made of the appropriateness of convening this conference'. This State therefore wishes 'to know the positions of the other States concerned before expressing its own views'.

- One State considered that such a conference 'should be held if the party concerned was in favour of such a meeting, so that the prospect existed for an improvement in the enforcement of the Fourth Geneva Convention'. This State, noting that such a meeting, or a comparable one, had never before been held, said that 'careful and prudent preparation was an essential precondition for a conference'.

- One State said that it 'upheld, in principle, the idea of convening a conference of the States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War on measures to enforce the Convention in the [territories referred to in resolution ES-10/3]', but that 'a conference of this type required thorough preparation and should be structured and timed so as to enhance the possibility of attaining a lasting peace in these regions'.

- One State thought it would be preferable, 'given the delicate situation in the Middle East, to await progress on the efforts being made to bring about the resumption of the peace process, particularly at a time when meetings are planned in the near future between the parties directly involved'.

- One State wrote that it wished 'to try to exchange views with other Governments in order to ensure that the convening of the conference at the current stage will not provoke further tensions in Israeli-Palestinian relations and will not endanger the fragile peace which has already been threatened by the outbreak of violence'.

- One State said that it 'did not believe that the convening of a conference of the High Contracting Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War would make an effective contribution towards advancing the peace process'.

- One State said that 'in addition to recognizing the rights of the Palestinian people, the resolution should contain an acceptance of the fact that the peace process and the implementation of the agreements between the Government of Israel and the autonomous Palestinian Government should guarantee that neither of the two Parties would commit acts which would affect the peace process

and tolerance, an indispensable condition to ensure the success of the negotiations'.

- Four States reiterated word-for-word the joint reply which the State currently presiding over the body of which they are members had been authorized to transmit, according to which the members of that body suggested that 'the possibilities should be explored of convening a meeting of experts which would be charged with examining the political and legal context before a conference of the High Contracting Parties was convened'.

- One State, a member of the same body as the four mentioned above, said that the State currently presiding over that body 'had been authorized ... to transmit a joint reply', and that 'that note thus reflects [its] opinion'.

- One State, a member of the same body as the five mentioned above, said that the question 'would be dealt with' by the State currently presiding over that body 'on behalf of its member countries'.

- Three States, members of the same body as the six mentioned above, referred to 'the note verbale sent' by the State currently presiding over that body, 'which reflects the opinion (the position) [of their] Government[s] on the matter'.

"Moreover, the depositary received a letter from the President of the Coordinating Bureau of the Movement of Non-Aligned Countries in which he expressed 'the support of the Movement for the convening of a conference of the Parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as recommended in paragraph 10 of resolution ES-10/3 adopted by the United Nations General Assembly on 15 July 1997'.

"Similarly, the Secretary-General of the League of Arab States sent a letter expressing 'the approval of all the Arab countries of the contents of the letter from the Swiss Government concerning the holding of such a conference', adding, in a subsequent letter, that 'the Arab countries would hope that this conference will be held as soon as possible in order to safeguard the interests of the Palestinian people'.

"Lastly, the Presidency of the Council of the European Union stated that it had been 'authorized by the 15 States members of the European Union, High Contracting Parties to the Geneva Conventions, to transmit a joint reply from the 15 member States concerning the follow-up to resolution ES-10/3, paragraph 10 of which provides for the convening of a conference'. In this joint reply, the member States said that they 'believe that the convening of a conference in the immediate future would, in the present circumstances, risk giving rise to additional complications unless it was carefully prepared'. The member States therefore suggested that 'the possibilities should be explored of convening a meeting of experts which would be charged with examining the political and legal context before a conference of the High Contracting Parties was convened.

The meeting of experts could also examine the broader implications of such a conference'.

'Upon receipt of these collective replies, the depositary indicated that, out of a concern for clarity and precision, it would, as far as possible, like to be able to obtain individual replies from the States concerned. A number of those States acceded to the depositary's request and sent individual replies, included in the 53 mentioned above, along the lines of the reply sent by the body of which those States were members.'